IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-5937

VENTURA YBARRA, Appellant

-vs-

PEOPLE OF THE STATE OF ILLINOIS, Appellee

ON APPEAL FROM THE ILLINOIS APPELLATE COURT,
SECOND JUDICIAL DISTRICT

APPELLANT'S REPLY TO MOTION TO DISMISS

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The State argues that the search in this case was conducted pursuant to probable cause or reasonable suspicion. In fact, the testimony of the police officer who conducted the search shows that he did not have probable cause or reasonable suspicion that a crime had been committed by any patron or that any patron was armed, dangerous, or hostile. Therefore, the only possible justification for the search which the State can advance is the authority provided by Ill. Rev. Stat., 1975, Sec. 108-9, a statute which cannot pass constitutional muster.

As did the Appellate Court of Illinois, the State simply ignores the most critical facts of this case, and thereby distorts the issue. The State would have this Court believe that "there was a well founded suspicion or belief that the defendant was a participant in an ongoing criminal offense, namely, narcotics traffic." (Motion to Dismiss, p.3) But Officer Jerome Johnson made it absolutely clear that he had no such suspicion prior to his search of Ybarra. Specifically, he testified that he had no indication that Ybarra or any of the other patrons had committed any crime. (R.27) [See excerpts of Officer Johnson's testimony at Appendix A of this brief.] The State does not dispute the fact that the searching officer testified that he had no suspicion of criminal activity, nor do they point to any testimony which would refute the appellant's claim on this point. It is difficult to imagine what could be more important in determining whether a police officer had cause to conduct a search than his own testimony, yet this testimony is ignored by the State.

The State argues that it was reasonable to believe that the twelve patrons were purchasing narcotics (Motion to Dismiss, page 3), and that the search of all twelve patrons was therefore proper. This contention is refuted by the facts. The Aurora Tap was a public drinking establishment. Is the State saying that it was reasonable to believe that everyone was in this public bar for an unlawful purpose, that no one was drinking beer or playing pinball or conversing with friends? (It should be noted in this regard that there was no evidence that Greg, the bartender who was supposedly selling narcotics, was even in the bar at the time of the police entry.) In fact, this case presents a grossly unreasonable exercise of police authority, as demonstrated by the officer's admission that the search was not based on any suspicion.

The facts of this case, which remain undisputed, show that the searching officer possessed no suspicion that the

patrons were armed or hostile, were engaged in criminal conduct, or were connected to the contraband which was sought. (R.26-30, 76-80; See excerpts from Officer Johnson's testimony at Appendix A of this Brief.) The question presented by this case therefore narrows to this: May a State statute authorize a search under the above circumstances pursuant to a warrant for the premises? The answer must be no, for otherwise every warrant would become an overbroad general warrant. (See Jurisdictional Statement, pp. 7-11.) The Illinois statute involved herein therefore is unconstitutional.

Respectfully submitted,

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APPENDIX A

Excerpts from testimony of Officer Jerome Johnson at Suppression Hearing and Trial.

APPENDIX A

Q. At the time you undertook to search Mr. Ybarra, did you know Mr. Ybarra had committed a crime.

A. No.

Q. Did you know Mr. Ybarra had done anything that was violative of the Ordinances of the City of Aurora?

A. No.

Q. Or of the State of Illinois?

A. No.

Q. Or of any Federal Statutes?

A. No.

Q. Or any of the other patrons that were there?

A. No.

Q. And thereafter you conducted a search of Mr. Ybarra's person, is that correct?

A. That's correct.

Q. He moved -- He did not move towards you?

A. No.

Q. Did he give you any gestures or overt actions indicative of criminal conduct?

A. No. (R.27-28)

* * *

Q. As you first observed Mr. Ybarra did you notice anything protruding from his coat pocket?

A. No.

Q. Anything protruding from his pants pocket?

A. No.

Q. Did you notice anything about his person that would give you the impression of a weapon?

A. No.

Q. At the time that you observed Mr. Ybarra, did you have any knowledge that Mr. Ybarra had committed any act violative of the Ordinance of the City of Aurora?

A. No.

Q. At the time that you first observed him did you notice or did you have knowledge as to whether or not Mr. Ybarra committed any act violative of the Statutes of the State of Illinois?

A. I had no such knowledge.

Q. At the time you observed him did you notice that he had committed any act violative of any Federal Statute?

A. No.

Q. To the best of your knowledge he had done nothing wrong?

A. Correct. (R.77-78)

* * *

Q. You returned to search Mr. Ybarra again?

A. Correct.

Q. Did you observe a weapon on him at that time?

A. No.

Q. Did you have any knowledge that he committed an offense at that time --

A. No.

Q. (continuing) -- of either a State, local or Federal statute?

A. No, I didn't.

Q. And you submitted him to a search again?

A. Correct.

Q. For weapons?

A. No.

Q. Did you have any knowledge that he had anything upon his person that was violative of any Statute?

A. No. (R.79-80)